

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

DAVID DYE,

Plaintiff,

v.

Case No. 1:12-CV-1204

KENNETH HATFIELD, et al.

HON. GORDON J. QUIST

Defendants.

---

**MEMORANDUM ORDER ADOPTING REPORT AND RECOMMENDATION**

Plaintiff has filed a complaint pursuant to 42 U.S.C. § 1983 against three Michigan Department of Corrections' officers, in both their official and individual capacities. Plaintiff seeks monetary relief and a declaration that Defendants' actions violated his civil rights. Defendants moved to dismiss the claims against them in their official capacities. On October 10, 2013, Magistrate Judge Ellen Carmody filed a Report and Recommendation (R & R), recommending that this Court grant Defendants' motion for partial dismissal. On October 30, 2013, Plaintiff filed an objection to the R & R.

Pursuant to 28 U.S.C. § 636(b)(1), this Court is required to review *de novo* those portions of the R & R to which specific objections have been made. The Court may accept, reject, or modify any or all of the magistrate judge's findings or recommendations. *Id.*

The Eleventh Amendment generally bars federal actions against a state unless the state has waived its sovereign immunity or consented to suit in federal court. *Grinter v. Knight*, 532 F.3d 567, 572 (6th Cir. 2008). A suit against a state official in his official capacity is considered a suit

against the state. *See id.* The State of Michigan has not consented to civil rights lawsuits in federal court. *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 545 (6th Cir. 2004). Accordingly, the Eleventh Amendment bars Plaintiff's suit against Defendants in their official capacity.

Plaintiff objects to the R & R on the ground that his complaint was not dismissed when an initial review was conducted pursuant to 28 U.S.C. §§ 1915(e) and 1915A. The fact that Plaintiff's complaint was not dismissed upon initial review, however, is not sufficient to allow it to proceed at this stage. The Eleventh Amendment mandates the dismissal of Plaintiff's claims against Defendants in their official capacity.

After reviewing the R & R and Plaintiff's objection, the Court will overrule Plaintiff's objection and adopt the R & R as the opinion of the Court.

Therefore,

**IT IS HEREBY ORDERED** that the Magistrate Judge's Report and Recommendation issued October 10, 2013 (dkt. # 36) is **APPROVED AND ADOPTED** as the Opinion of this Court.

**IT IS FURTHER ORDERED** that Defendant's motion for partial dismissal (dkt. # 27) is **GRANTED**. Defendants are entitled to immunity as to claims asserted against them in their official capacity. Accordingly, these claims are dismissed with prejudice.

Dated: November 5, 2013

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE